DAVIS & GILBERT LLP
Ina B. Scher
ischer@dglaw.com
Claudia G. Cohen
ccohen@dglaw.com
1740 Broadway
New York, NY 10019
(212) 468-4937
(212) 468-4888 fax

Attorneys for Plaintiff Geometry Global LLC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GEOMETRY GLOBAL LLC, Plaintiff, -against- VOXPOP USA, LLC d/b/a VOXPOP RADIO NETWORK, Defendant.	Case No. **COMPLAINT** **(ECF CASE)**

Plaintiff Geometry Global LLC ("Geometry"), by and through its attorneys, Davis & Gilbert LLP, for its Complaint against Defendant VoxPop USA, LLC d/b/a VoxPop Radio Network ("VoxPop" or "Defendant"), alleges as follows:

NATURE OF ACTION

1. This action arises out of Defendant's intentional conversion of property belonging to Geometry. Geometry, an award-winning brand activation agency, worked with, had financial transactions with, and previously wired funds to two similarly named entities -- Defendant VoxPop USA, LLC and VoxPop Communities, Inc. Therefore both Defendant and VoxPop Communities, Inc. were in Geometry's accounting system along with wiring instructions for each. As of May 2016, Geometry owed VoxPop Communities, Inc. $176,000.00. Geometry

owed nothing to Defendant. Geometry intended to wire the $176,000.00 to VoxPop Communities, Inc., the rightful recipient, in two installments on May 20, 2016 and July 17, 2016. Unfortunately, Geometry erroneously wired the sums to Defendant.

2. Between May and November 2016, Geometry repeatedly demanded that Defendant return the $176,000.000 that Geometry wired to its account in error.

3. Defendant acknowledged that it was not owed nor entitled to retain the $176,000.00 and repeatedly assured Geometry that it would return the funds.

4. However, Defendant has yet to return the $176,000.00 belonging to Geometry, and this money remains in Defendant's possession, custody, and control.

5. Defendant's continued wrongful possession of Geometry's property has caused harm to Geometry in the amount of $176,000.00, plus interest and attorney's fees.

PARTIES

6. Plaintiff Geometry is a limited liability company formed pursuant to the laws of the State of New York, having its principal place of business in New York, New York.

7. Upon information and belief, Defendant is a limited liability company formed pursuant to the laws of the State of Delaware, having its principal place of business in Newburyport, Massachusetts.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332(a)(1) because Geometry is a citizen of New York, Defendant is a citizen of Delaware and Massachusetts, and the matter in controversy exceeds $75,000 exclusive of interests and costs.

9. This Court has personal jurisdiction over Defendant pursuant to N.Y. C.P.L.R. § 302(a) because Defendant has committed a tortious act within the state of New York (or if

Defendant's tortious act was committed without the state of New York, it caused injury to Geometry within the state, and within the state Defendant regularly did or solicited business, engaged in a persistent course of conduct, or derived substantial revenue from services rendered, or Defendant should have reasonably expected its act to have consequences in the state and derived substantial revenue from interstate commerce). Geometry's claims arise from and are related to Defendant's contacts with the state of New York.

10. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391(b)(2) because this civil action is founded on diversity jurisdiction and this is the district in which a substantial part of the events giving rise to the claims occurred. Venue in this judicial district is also proper pursuant to 28 U.S.C. § 1391(b)(3) because this civil action is founded on diversity jurisdiction and Defendant resides in this district due to their being subject to personal jurisdiction pursuant to its commission of a tortious act within this state (or without this state, as stated above).

FACTUAL BACKGROUND

11. During the course of its business, Geometry worked with two vendors that had similar names but were not related to each other: VoxPop Communities, Inc. and Defendant. Both vendors were listed in Geometry's accounting system along with wire instructions for each.

12. As of May 2016, Geometry owed $176,000.00 to VoxPop Communities, Inc. for services that it provided to Geometry. Geometry owed no outstanding balance to Defendant.

13. Geometry had ownership, possession, or control over $176,000.00 in its accounts, which it intended to wire to VoxPop Communities, Inc. in two installments as payment for the services that VoxPop Communities, Inc. performed for Geometry.

14. Geometry, however, erroneously wired the total sum of $176,000.00 to Defendant instead of the intended recipient, VoxPop Communities, Inc. Specifically, on May 10, 2016,

Geometry wired the first installment of $151,000.00 (Payment Clearing #202047758), and, on July 17, 2016, Geometry wired the second installment of $25,000.00 (Payment Clearing #20235493).

15. When Geometry learned that it had mistakenly wired $176,000.00 to Defendant instead of VoxPop Communities, Inc., Geometry attempted to reverse the two wires, but it was unable to do so.

16. From May 2016 to November 2016, Geometry repeatedly demanded that Defendant return the mistakenly wired $176,000.00 to Geometry. Defendant continually acknowledged that it was not entitled to retain the $176,000.00 and promised to return it to Geometry, but Defendant ultimately never did so.

17. On May 24, 2016, Milagros Valdes, Geometry's Accounts Payable Associate, left messages for Patti Drager in Defendant's office, but Geometry never received a response.

18. On July 12, 2016, Marisol Mendoza, Geometry's Vice President Client Finance, also left messages from Ms. Drager but never received a response.

19. On July 14, 2016, Ms. Mendoza left a message for Andrew Casson, Defendant's Chief Executive Officer. Mr. Casson responded by email that Defendant intended to refund the the erroneous payment in full by the end of July 2016. When payment was not forthcoming, Ms. Mendoza followed up with Mr. Casson on July 18, 2016, and Mr. Casson responded that he would provide an update when he returned to the office on July 21, 2016. Ms. Mendoza did not hear back from Mr. Casson on or after July 21, 2016, despite contacting Mr. Casson by voicemail and email on numerous occasions.

20. On August 16, 2016, David Long, Geometry's Vice President Finance Director, left a voicemail for Mr. Casson demanding that Defendant return the $176,000.00. When Mr.

Casson again failed to respond, Mr. Long sent a demand letter for Defendant's return of the $176,000.00 to Mr. Casson the next day.

21. On August 19, 2016, Mr. Long emailed Mr. Casson: "Please respond to this email and attached letter to confirm you will refund to Geometry Global the $176,000.00 that was paid to you in error" by the end of August 2016. That same day, Mr. Casson replied: "Please accept this email as confirmation of my receipt of your email, the letter and our acceptance of the debt owed." Mr. Casson stated that he would call Mr. Long that Monday (August 22, 2016) to "put the right timeframes on getting this rectified immediately." Defendant failed to contact Mr. Casson on August 22 or return the $176,000.00 by the end of August.

22. On September 7, 2016, Mr. Long emailed Mr. Casson, referencing a call that they had on August 29, 2016. Mr. Long asked Mr. Casson to "confirm that we discussed that you would issue payment, via wire, to Geometry Global for the $176,000.00 outstanding no later than next Friday, September 16th." The next day, Mr. Casson confirmed, stating: "Understood and the plan is still in place." Defendant, however, failed to return the $176,000.00 by September 16, 2016, by wire or otherwise.

23. On September 20, 2016, Mr. Long again emailed Mr. Casson that Geometry had "not received the payment you confirmed would be received by end of day 9/16/16." On September 23, 2016, Mr. Casson replied that he would call Mr. Long that day "and rectify this."

24. On October 6, 2016, Christine Lee, Geometry's Director, Client Finance, emailed Mr. Casson "to demand that payment be issued by Friday, October 14th", otherwise Geometry's legal counsel would take over pursuit of the payment, and Geometry would also seek to recover its attorney's fees." On October 17, 2016, Mr. Casson again responded: "We confirm we owe this and would also like to avoid and [*sic*] need for legal to get involved." Mr. Casson asked for

a call "to update you on our situation and our plan to get this paid quickly." That call never occurred, despite Ms. Lee's efforts, and the $176,000.00 was not returned to Geometry.

25. On November 18, 2016, Geometry's legal counsel sent a letter to Mr. Casson, demanding that Defendant refund "the $176,000.00 payment Geometry mistakenly wired to VoxPop Radio Network . . . instead of its intended, rightful recipient VoxPop Communities, Inc." by November 23, 2016. Neither Mr. Casson nor anyone else from Defendant responded to this letter.

26. Despite Geometry's repeated demands that Defendant return the $176,000.00 that was erroneously wired to Defendant but intended for VoxPop Communities, Inc., and despite Mr. Casson's repeated promises that Defendant would return the total sum, Geometry has still not received the payment that it erroneously made to Defendant.

27. Defendant continues to unlawfully possess the $176,000.00.

FIRST CAUSE OF ACTION
(Conversion)

28. Geometry realleges and incorporates by reference the allegations contained in each paragraph above as though fully set forth herein.

29. Geometry mistakenly wired $176,000.00 in two installments to Defendant instead of the intended, rightful recipient to whom Geometry owed payment, VoxPop Communities, Inc.

30. Geometry has the right to possession of the $176,000.00 because it owed nothing to Defendant at the time.

31. From May 2016 to November 2016, Geometry duly and repeatedly demanded that Defendant return the $176,000.00 that it had mistakenly received by wire from Geometry.

32. During this time, Defendant repeatedly acknowledged to Geometry that it was not entitled to the $176,000.00 and promised to return the wrongfully wired sum to Geometry.

33. At no time did Defendant obtain any ownership interest in or right to maintain possession of the $176,000.00, nor did Defendant obtain a legitimate basis to refuse to return the sum to Geometry.

34. To date, Defendant has knowingly and intentionally retained, exerted unauthorized control over, and refused to return the $176,000.00 belonging to Geometry.

35. Defendant's unlawful retention of Geometry's $176,000.00 for its own use constitutes conversion.

36. As a result of Defendant's conversion of the $176,000.00 belonging to Geometry, Geometry has suffered damages in the amount of $176,000.00, plus interest and attorney's fees.

SECOND CAUSE OF ACTION
(Unjust Enrichment)

37. Geometry realleges and incorporates by reference the allegations contained in paragraphs 1 through 27 above as though fully set forth herein.

38. Geometry mistakenly wired $176,000.00 in two installments to Defendant instead of the intended, rightful recipient to whom Geometry owed payment, VoxPop Communities, Inc.

39. Defendant was not owed, has not earned and has acknowledged that it is not entitled to the $176,000.00 Geometry wired to it in error.

40. Defendant has refused to return the $176,000.00 wired to its account in error.

41. Defendant has been unjustly enriched at the expense of Geometry in the amount of $176,000.00.

42. Equity requires Defendant to make restitution to Geometry in the amount of $176,000.00.

WHEREFORE, Geometry prays for judgment to be entered in his favor and against Defendant as follows:

A. An award of $176,000.00, plus interest, as damages that Geometry has sustained due to Defendant's conversion of its funds;

B. An award of attorney's fees incurred by Geometry in its attempts to recover damages from Defendant, in an amount to be determined; and,

C. Such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Geometry demands trial by jury on all claims and issues so triable.

Dated: December 14, 2016

DAVIS & GILBERT LLP

By: *\/s/ Ina B. Scher*

Ina B. Scher
ischer@dglaw.com
Claudia G. Cohen
ccohen@dglaw.com
1740 Broadway
New York, NY 10019
(212) 468-4800
(212) 468-4888 fax

Attorneys for Plaintiff Geometry Global LLC